

News story: Statement on the Sewel Convention

Speaking in the House of Commons on the 14th June 2018, Mr Mundell said:

With your permission Mr Speaker, I would like to make a statement on the operation of the Sewel Convention and its application to the European Union (Withdrawal) Bill in relation to Scotland. Mr Speaker, these are serious times and serious issues. I have come to the House today with respect and ready for constructive debate, and I hope that is the spirit of all sides.

Lord Sewel set out a commitment in 1998 that there should be a parliamentary convention to recognise that where the UK Parliament legislated in a devolved area it would and I quote 'not normally legislate without the consent of the Scottish Parliament'. Throughout the passage of this Bill, the Government has demonstrated its commitment to the Sewel Convention and the principles that underpin our constitution. We have followed the spirit and letter of the devolution settlement at every stage.

The EU (Withdrawal) Bill is about ensuring that the whole of the United Kingdom has a functioning statute book on Exit Day. It is about providing legal certainty to businesses and individuals up and down the country.

From the outset we have been clear that as a result of the UK's exit we would expect to see a significant increase in the decision-making powers of the devolved institutions. We have been clear that Exit would provide the opportunity to bring powers home from Brussels, not just to the UK Parliament, but to all of the legislatures of the United Kingdom.

We must remember that the powers in question were handed to the European Union through our membership in 1972, long before devolution existed in Scotland. Exit was neither anticipated nor provided for within the Scotland Act and the structure of the devolution settlement. So it is certainly fair to say – as Mike Russell, the Scottish Government's own Brexit Minister has said – 'these are not normal times'.

Nethertheless, we have sought to respect the devolution settlements at every turn and recognised the strength of feeling across this House, as well as within the devolved administrations, that the original measures set out in the Bill did not meet aspirations. No one could deny this Government has come a long way from that original position. Discussions have been conducted at multilateral level through the JMC(EN) and the JMC(P) chaired by the Prime Minister, bilaterally between administrations and extensive official level engagement. And we have made significant changes to the Bill.

These changes enabled agreement with the Welsh Government and to gain the approval of the Other Place and this House.

And these changes have seen the original Clause turned on its head. Now, all decision-making powers returning from the EU that intersect with devolved competence will pass directly to Cardiff, Edinburgh and Belfast, unless explicit steps are taken to temporarily preserve an existing EU framework.

The Inter-Governmental Agreement underpinning the new clause set out how those steps should be taken – with an emphasis on collaboration and agreement.

Together, this means we are emphatically delivering on our commitment to give significant further powers to the Scottish Parliament.

The clause also provides in certain, limited cases the current arrangements we have under the EU will remain until we have implemented our new UK-wide frameworks. I want to stress that we have already agreed with the Scottish and Welsh Governments where this temporary preservation needs to be considered – the governments are agreed that “freezing” areas is likely to be in just 24 of the 153 areas of power returning to the UK from the EU.

And to anyone who has sought to present this as seeking to take powers back from that the Scottish Parliament already has, I repeat again here that the Bill includes a specific provision that makes clear explicitly that no decision making powers currently exercised by the Scottish Parliament can be taken away.

These amendments strike the right balance between ensuring that Exit results in increased decision making powers for the devolved legislatures, while continuing to provide certainty about how our laws will operate and protecting our UK internal market, a market so vital for Scotland's businesses.

These amendments do not, and cannot, go as far as the Scottish Government want, because the Scottish Government want a veto over arrangements that will apply to the whole of the UK. But as Lord Wallace, the former deputy First Minister of Scotland set out when the Bill was being debated in the Other Place this was not part of the original devolution settlement.

Our approach also helps to ensure the continued integrity of the UK internal market, which is so vital to the people and businesses in Scotland. At every stage, the Scottish Government has disregarded the need to preserve this market and ensure there are no new barriers to working or doing business in the UK. The UK internal market is worth nearly four times more to businesses in Scotland than EU trade, and we must make sure it is preserved as we leave the EU.

We have reached a point now where, as the Welsh Government have stated clearly, these arrangements reflect and respect how the devolution settlements operate.

The devolved legislatures will have a formal role in considering where existing frameworks need to be temporarily preserved. That is what we have delivered.

However, Scotland has two democratically elected Parliaments, and it is only this Parliament, the UK Parliament, that can speak for the UK as a whole.

It is deeply regrettable that the Scottish Government were unable to sign up to the compromise solution brokered by officials from all the administrations working together.

But, Mr Speaker, as we all know, you can only reach agreement in a negotiation if both sides actually want to reach agreement.

The Scottish Government's position from the outset was that they would be content with nothing less than a veto. However, such an unreasonable position would fundamentally undermine the integrity of that UK internal market. This would harm business in Scotland and the rest of the UK.

Despite the numerous attempts to find compromise, and the fact one was reached with the Welsh Government, the Scottish Government position has not changed. As a result this Government, which represents the whole of the UK, could not responsibly accept their position.

We are now therefore faced with the reality that the Scottish Parliament has not given consent for this critically important legislation that provides certainty across the UK.

This is not a situation any of us would have chosen. It is not however a crisis, nor is it unforeseen. While the devolution settlements did not predict EU Exit they did explicitly provide that in, situations of disagreement, the UK Parliament may be required to legislate without the consent of the devolved legislature.

In any situation agreement is our aim. And we will continue to seek legislative consent, take on board views, and to work with the Scottish Government on future legislation just as we always have done.

We on this side of the House have compromised. We have made efforts to reach agreement. We have sought consent. Now we are legislating in line with the Sewel Convention to ensure the whole of the United Kingdom leaves the EU with as much legal certainty as possible. That is what the people and businesses of Scotland need.